

refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA or its successor agency under Public Law 103-354's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA or its successor agency under Public Law 103-354's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of \_\_\_\_ years beginning on \_\_\_\_, 19\_\_, created and established by a certain Lease dated \_\_\_\_, 19\_\_, executed by \_\_\_\_ as lessor(s), recorded on \_\_\_\_, 19\_\_, in Book \_\_\_\_, page \_\_\_\_ of the \_\_\_\_ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made

to Indians holding title to land in trust or restricted status, FmHA or its successor agency under Public Law 103-354 and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Special security requirements.* When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA or its successor agency under Public Law 103-354 for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(g) *Same security.* Except as provided in paragraph (f) of this section, when an SW loan (insured or guaranteed) is made to a borrower who has other FmHA or its successor agency under Public Law 103-354 loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

[53 FR 35706, Sept. 15, 1988, as amended at 57 FR 18678, 18679, Apr. 30, 1992; 59 FR 22962, May 4, 1994; 59 FR 25801, May 18, 1994]

#### §§ 1943.70–1943.72 [Reserved]

#### § 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of part 1806 of this chapter (FmHA instruction 426.2) as well as subpart G of part 1940 of this chapter will be complied with when loan funds are used to

construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

- (i) Likelihood of flooding.
- (ii) Probability of flood damage.
- (iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA or its successor agency under Public Law 103-354 representatives will evaluate the proposal and record the decision in the loan docket in accordance with subpart G of part 1940 of this chapter.

(b) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA or its successor agency under Public Law 103-354 that will be performed by a contract or sub-contract of more than \$10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 of this chapter apply.

(d) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable environmental requirements. Refer to FmHA Instruction 2000-LL (available in any FmHA or its successor agency under Public Law 103-354 office) for assistance in implementation.

(e) *Equal Credit Opportunity Act.* In accordance with title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA or its successor agency under Public Law 103-354 will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use and restrictions for water development. State supplements will be issued to provide guidelines which:

- (i) State all requirements to be met, including the acquisition of water rights.
- (ii) Define areas where development of ground water for irrigation is not recommended.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

[53 FR 35706, Sept. 15, 1988, as amended at 57 FR 18679, Apr. 30, 1992; 58 FR 15074, Mar. 19, 1993]

#### § 1943.74 Special requirements.

(a) *Land development.* When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) program.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes: